

August 13, 2001

The Honorable George W. Bush
President of the United States
The White House
1600 Pennsylvania Avenue, NW.
Washington, D.C. 20500

Dear Mr. President:

On Thursday, August 2, 2001, the House of Representatives passed H.R. 2563, the “Bipartisan Patient Protection Act,” on a largely party-line vote. Despite Democratic concerns about the lack of effective remedies for managed care abuses, you described the bill as “good for patients.”

Now we have learned that your Administration is poised to undermine key measures to protect millions of Americans from managed care abuses – including measures that are identical to those contained in the very bill you support. Specifically, Secretary of Health and Human Services Thompson has apparently submitted plans to the Office of Management and Budget to block or postpone for the third time patient rights’ regulations in the Medicaid program before they would take effect on August 17, 2001.

What makes this move particularly surprising and disappointing is that the most contentious issue in the Congressional debate over managed care reform – legal remedies for managed care abuses – is simply not at stake with the Medicaid rules. Rather, the rules embody the commonsense protections that have been endorsed by all sides in the Patients’ Bill of Rights debate. The rules would provide these protections to approximately half of all Medicaid patients, who are required to enroll in managed care plans and have few rights under present regulations.

The Medicaid program historically has provided fee-for-service insurance coverage to low-income women, children, families, people with disabilities and seniors. Beginning in the 1980s, some states began to experiment with managed care as a potentially less expensive way to provide Medicaid coverage. Widespread abuses were then reported among Medicaid managed care plans in such states as Florida¹ and Tennessee.²

¹Shulte F, Bergal J. Profits from pain: Florida’s Medicaid HMO system is ailing. While the state pays millions into the system, health care for the poor lags and the State appears helpless to do anything about it. *Fort Lauderdale Sun-Sentinel*. December 11, 1994, A1.

²Mistakes and scandals still hound TennCare. *The Commercial Appeal*. May 17, 1994, 6A.

Prior to the Balanced Budget Act of 1997, states seeking to require managed care enrollment for Medicaid populations needed to obtain a waiver from the Department of Health and Human Services. While the 1997 law lifted this requirement for a Federal waiver, it also required that there be consumer protections for Medicaid beneficiaries in managed care plans. The Balanced Budget Act thus embodied a tradeoff: While state Medicaid programs would gain flexibility by avoiding time-consuming waiver applications, the programs would also be subject to new Federal standards for patient rights.

So far, only one part of this agreement – permission for states to require beneficiaries to join managed care plans in order to get health services – has been realized. The previous administration proposed regulations to protect Medicaid patients from managed care abuses on September 29, 1998, reviewed more than three hundred comments, and issued final regulations on January 19, 2001. These rules were based upon two widely respected documents: (1) the Consumers Bill of Rights and Responsibilities, which was produced in November 1997 by a Presidential Advisory Commission with consumer, professional, and industry representation, and (2) *Safeguards for Individuals with Special Health Care Needs in Medicaid Managed Care*, a report to Congress prepared by the Health Care Financing Administration (in response to a requirement also in the Balanced Budget Act) in the fall of 2000.

Although the Medicaid patient protections as published in the final rule were to take effect on April 19, 2001, you acted to delay implementation until June 18, 2001. Then, on June 18, you further delayed implementation until August 17, 2001. We have just learned that Secretary Thompson is planning to delay the rules further or revoke them altogether.

Why are patient protections for U.S. children, individuals with disabilities and seniors being sacrificed, just days after your rhetorical support for these same provisions? For example:

- **Emergency Access.** In a speech to the American College of Cardiology, you declared, “We must guarantee *all patients*...the right to get emergency treatment at the nearest emergency room.” The patient rights bill you support, H.R. 2563, provides that patients suffering intense pain or fearing for their lives can go directly to an emergency department without obtaining approval ahead of time from managed care reviewers. The Medicaid rules include identical provisions.
- **Specialty Care.** You have stated, “We must guarantee *all patients*...the right to see a specialist when they need one – say, just for an example, the right to see a cardiologist for a heart problem.” The patient rights bill you support includes provisions to help patients get the specialty care they need, even if it means seeing a doctor outside the network or having a “standing referral” to a specialist. So do the Medicaid rules.

- **Appeals Process.** Your public position is: “If medical care is denied, patients should have the right to a fair and immediate review.” H.R. 2563 allows patients to appeal insurance decisions within the health plan. So, too, the Medicaid rules.
- **Women’s Health.** In your words: “Women should be able to visit their gynecologist...without going through a gatekeeper.” The patient rights bill you support would achieve this goal, as would the Medicaid rules.
- **Truth in Marketing.** H.R. 2563 provides that plans must clearly explain their benefits, provider networks, appeals processes, and other key provisions to patients. So do the Medicaid rules.

Not only are the provisions of H.R. 2563 similar to the Medicaid rules, the bill also, in Section 301, explicitly expresses the “sense of Congress” that the President should extend key patient rights to Medicaid beneficiaries. Yet the Administration apparently is retreating, to the detriment of our most vulnerable citizens. We urge you to intervene and preserve these critical protections for millions of America’s children, individuals with disabilities and seniors. You have the chance to make the basic protections that you endorsed last week a reality for approximately 20 million Americans.

Sincerely,

John D. Dingell
Ranking Member
Committee on Energy and
Commerce

Sherrod Brown
Ranking Member
Subcommittee on Health
Committee on
Energy and Commerce

Henry A. Waxman
Ranking Member
Committee on Government
Reform